

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

**RUTH NELSON, Individually and as
Plaintiff Ad Litem for ROBERT V.
NELSON, deceased,**

Plaintiff,

vs.

**UNITED STATES OF AMERICA,
DEPT. OF VETERANS AFFAIRS,**

Defendant.

Case No. 1:16cv221

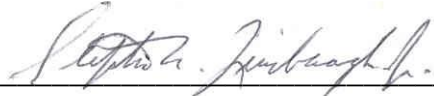
MEMORANDUM & ORDER

This matter is before the Court on defendant's motion to dismiss (#3). Defendant moved to dismiss Count II of plaintiff's complaint because it contends plaintiff's complaint failed to adequately alleged plaintiff's lost chance of recovery claim. Plaintiff responded to defendant's motion by filing an amended complaint (#5) and a response in opposition to the motion that explained that the amended complaint cured the defects raised by defendant. Defendant did not file a reply brief or otherwise respond to plaintiff's contention that the amended complaint cured the deficiencies raised by the motion.

Accordingly,

IT IS HEREBY ORDERED that defendant's motion to dismiss Count II (#3) is
DENIED as moot.

Dated this 15th day of November, 2016.

A handwritten signature in cursive script, reading "Stephen N. Limbaugh, Jr.", written in black ink over a horizontal line.

STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE